

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES

September 22, 2009

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, September 22, 2009, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Robert C. Gibbons in the Board of Supervisors Chambers. Mr. Gibbons introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Mr. Gibbons stated the Bylaws of this Board state the applicant would be allowed up to ten minutes to state their case, the other speakers would be allowed three minutes to testify, and the applicant would be allowed three minutes for rebuttal.

Members Present: Ernest Ackermann, Ray Davis, Robert Gibbons, Larry Ingalls and Karl D. Larson

Members Absent: Steve Beauch and Marty Hudson

Staff Present: Gail Roberts, Deputy County Attorney
Rachel Hudson, Zoning Administrator
Melody Musante, Senior Zoning Technician
Aisha Hamock, Recording Secretary

Mr. Gibbons: Are there any changes or additions to the advertised agenda?

Mrs. Musante: There are no changes.

Mr. Gibbons: Before we hear here the first case, does any Board member wish to make any declaration statement concerning any cases to be heard before the Board tonight?

DECLARATIONS OF DISQUALIFICATIONS

Mr. Ingalls: Mr. Chairman, in case A09-2/2900205 and case A09-3/2900213, those cases are represented by Mr. Leming. From time to time, the firm that I work for, Sullivan, Donohue and Ingalls has shared the same clients with Mr. Leming's firm. Sullivan, Donohue and Ingalls has not worked on either one of these projects with Mr. Leming, I do not personally represent either one of the clients represented tonight on the application. Therefore, I will be able to participate fairly, objectively and in the public interest on both cases.

Mr. Gibbons: Any other? Fellow members of the Board, I did get a call from the applicant's attorney on case A09-2/2900205 and at the request of Mr. Fields, I did go the property and review the property with Mr. Fields and so I want to make that clear to the public that I did visit the site. Okay. I am going to ask the Secretary to read the first case please.

PUBLIC HEARINGS

1. **SE09-4/2900207 - ROSE PANTAZIS** - Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards", R-1, Suburban Residential, to allow an office as a Home Business on Assessor's Parcels 30A-3-17 & 18. The property is Zoned R-1, Suburban Residential, located at 12 Stafford Avenue.

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Mrs. Musante: Case SE09-4/2900207, Rose Pantazis requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards", R-1, Suburban Residential, to allow an office as a Home Business on Assessor's Parcels 30A-3-17 & 18. The property is Zoned R-1, Suburban Residential, located at 12 Stafford Avenue. You have the application, application affidavit, the interior layout, plat of the property, photos of the property, memo from the County Attorney's Office, the tax map and the vicinity map. Applicant is requesting a Special Exception to operate a law office from her home with days and hours of operation Monday through Friday, 9:00 am to 5:00 PM. There is one additional employee who does not reside at the premise. Applicant has indicated the existing detached garage will be used for storage of old files. The current single-family dwelling is 2,632 square feet per the Commissioner of Revenue. Applicant has indicated 658 square feet will be used for the business, which meets the requirement of twenty-five (25) percent. Building permit submitted January 25, 2008 for a handicap ramp. This application is what initiated the research of a possible violation of an illegal business. The inspector sent to property March 2008 to investigate. The inspector found three (3) attorneys using the home for a business. Violation notice sent March 26, 2008 for operating an office in the R-1 zoning district without obtaining proper permits. Notice was returned by the United States Postal Service for refusal of service. The violation notice was delivered by Professional Process Service, Inc on July 3, 2008. The R-1 zoning district allows a Home Business with approval from the Board of Zoning Appeals. Applicant submitted reclassification to rezone the property to B-3. The existing structure would not meet the required setback of the B-3 zoning district; therefore, a reclassification could not be processed. The applicant also submitted a Variance request for front setback but has since withdrawn that application. The applicant has been made aware she must reside on the property in order to have a Home Business.

Mr. Gibbons: Any questions of staff before we start?

Mr. Ingalls: Yes, Mr. Chairman, I noticed the staff listed under Development Conditions, no sign. That is not Ordinance requirement; they can have a sign?

Mrs. Musante: Correct.

Mr. Ingalls: They can have one?

Mrs. Musante: Yes.

Mr. Ingalls: Is there a size?

Mrs. Musante: Give me just a second to check.

Mr. Ingalls: I am sorry. Like two square feet or four square feet?

Mrs. Musante: It is small.

Mr. Ingalls: Very small, okay. You can let me know later if you want.

Mrs. Musante: Okay.

Mr. Gibbons: Any other questions? I will open the public hearing, the applicant is present, and would you state your full name and address please for the record?

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Ms. Pantazis: My name is Rose Pantazis and I live at 12 Stafford Avenue, Stafford, Virginia. Just about three or four blocks away from this County office building. I am a lawyer and I have lived in the County twenty-seven (27) years. Recently, I have moved into 12 Stafford Avenue so I can operate a home business from my home and that business would be my law office. I have prepared for the Board a list of exhibits that I would like to hand out.

Mr. Gibbons: Just give it to Melody and she will do that for you.

Ms. Pantazis: Okay. Melody has given you the history behind my application. Originally, when we were looking into buying the house at 12 Stafford Avenue; that was my husband and I. I had recently lost my lease and was looking for a new location and when we found the house on Stafford Avenue, we thought it would be perfect as to location and as to the way it was setup. Of course, it is only a couple of blocks from the Courthouse, so I am able every morning to walk to the Courthouse to come to my office in the courthouse in the courtroom. Let me give you this little bit of history, prior to buying the house, I did do some research and I came to the county office to the administrators office and saw the vision that the county was looking at in this Courthouse Road area. I saw that the Stafford Avenue was going to be in the redevelopment area and the hopes of the County to some day and I was hoping sooner, rather than later, was to rezone that as a commercial area. It was with a little bit of research that we did purchase this house and we were in a very precarious situation in that it was very quick having to leave my other office and going into this house. We were hoping for a more gradual transition time, a time when I could through the proper channels have my application form for rezoning submitted to the county. Unfortunately, from circumstances beyond my control was not able to do that. As I said, there is many advantages to operating my office so close to the Courthouse; I was very excited when we purchased the house because I thought it was going to be rezoned. We are in a transitional area on Stafford Avenue, part of it is commercial, part of it is residential and part is institutional. So I have commercial across the street being part of the Stafford County School Boards parking lot, I have neighbors next door to me that as you can see in your booklet, I have a plat as number two and you can see that I have two large lots and so where I say I have neighbors on either side of me, they are really pretty far away from the office itself. There are also natural shrubs and very tall tree on one side of me, that is kind of a hill and an embankment that shelters me or hide the house from my neighbor to the right. To the left, I have the additional lot, which on the plat was lot eighteen (18), so that the office is not really interfering with the character or tranquility with my neighbors at all. We do have office hours, they are from 9:00 am to 5:00 pm, it is a very quiet neighborhood, and I do not generate a lot of traffic. I deal mostly in domestic relations, I do not see very many clients during the week but I do see them and when I do see them, it is by appointment only. As Melody told you, I initially asked to rezone the property, it did not meet setback, it was thirty-five (35) and a half feet instead of forty (40) feet and so we withdrew that application and are here before you for a home business exception. I have moved into the residence, it was rather recently that I have moved in so that I can meet the requirements. I intend to live there; my husband and I, of thirty-seven (37) years have talked about this. We have money invested in this property and invested my business. We are becoming a little modern in the sense that we are going to have a little bit of a long distance relationship for a while until I retire. I lived with my husband at 1 Rose Petal Street in the Rockhill District so we are only about fifteen (15) minutes apart. My husband Mike is a very big part of my business where I do all of the work and all the legal aspects inside, he maintains the grounds and if you come and visit us at my home, you will see that he does a very nice job. He maintains the property, he fixes the plumbing and does all of the work we need done around the house and so he comes by very often. So we really are not separated in a true sense of the word, we are just not living under the same roof right now but every time we get to see each other, it is like a special occasion. We actually get to talk these days instead of just sitting down reading a book at home. While it is not the most perfect situation, it is one that we accept and will follow through as long as it is necessary until either the property

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is rezoned Commercial or that I retire. I have found several advantages to living at the house and one of those is that I have no travel time, I find myself getting up at 5:30 or 6:00 am and going into the office and writing a letter or doing an order or doing something and then doing my morning chore, which is, we have a cat. I had to bring my cat and so I clean her litter box, I make my breakfast, I wash my clothes, I do all the things that I would do at home in my new home. I have my chores during the morning and in the evening after office hours, it works out rather nicely. We have off street parking, we have repaved the driveway and you will see on the plat, which is exhibit two, that it is a circular driveway. When we moved in to the house, it was gravel and it was a little unsightly so we had the whole circular driveway repaved and have plenty of off street parking for any visitors that we would have to the office. I also would like to say that some of the things that I have done, I have included those, I think under tab 3, to show the Board that I have actually moved in and intent to make this my residence, I have changed my voter registration and now that I am in the Aquia District I can vote for Paul Milde. My car registration, I have had my car registered to reflect that I live at 12 Stafford Avenue. My driver's license is changed and I have changed some utilities bills; the first thing I had to get was cable television because I cannot make it without cable TV in the evening, I have to have my CNN. So, I have included that also in your package. I have talked with all of my neighbors on my block and they... Oh, one more thing, I was really excited when my neighbors invited me to a birthday party down the street and I thought that was very nice of them to do that, but I have talked with them and they given me letters and that is, I think number 5 in your book from each of my neighbors that say that they support my application and we have been there for 2 years and they are glad to have us there. Actually, I think they are a little happy to have a lawyer in the neighborhood because whenever they have a little bit of a dilemma they just drop by and ask what you think about this. Therefore, it nice for them and makes it nice for me because it is a very nice neighborhood that is very well established area. So with that, that is all I have to say and I welcome any questions that you would have, I hope I can answer all of them this evening.

Mr. Gibbons: Any questions of the applicant?

Mr. Ingalls: Your application listed hours that you would like to have, you requested 9:00 am to 5:00 pm, Monday through Friday.

Ms. Pantazis: Now I will say this, those are my office hours. I am not going to say those are necessarily the hours I work.

Mr. Ingalls: I understand that. I do not think we are going to regulate when you want to get up in the middle of the night and go read a law book. How about Saturday, do you ever anticipate having a client come by on Saturday. Not everyone can come by during the week.

Ms. Pantazis: I do not intend to have regular office hours on Saturday; I think that I have seen maybe two or three clients in my entire five years of practicing on a Saturday. That is just a very unusual circumstance, sometimes a friend will come by where they cannot come by during the week and I may sit down with them. They may end up being clients but friends are kind of in a different category. I think maybe two or three in the whole five years and I do not anticipate that.

Mr. Ingalls: Okay.

Mr. Davis: This listing you gave us indicates a square footage of 1,692, is that correct?

Ms. Pantazis: I do not think so, when I checked with the Commissioner of Revenue's office, that square footage does not include the basement and there was additional footage added to the basement. That may

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be the upstairs only, you will see the finished lower basement, the Commissioner of Revenue reports that there is additional square footage down in the basement and that is where the square footage came from. I am not certain why the tax... This came from the Treasurers Office and I am not certain why the Treasurers Office did that. I think Melody may have better information for you.

Mrs. Musante: Actually the information that you print off from the Commissioner of Revenues records; it only shows you the first floor square footage. It does not include any basement area; it does not include porches, garages or decks. It is simply the first floor because they are taxed at different rates.

Mr. Davis: Okay, you indicate the finished floor area is 2,632, does that include the basement.

Ms. Pantazis: Yes.

Mr. Davis: And the basement is finished or not?

Ms. Pantazis: It is partially finished, it has drywall up, that is where I have my washer machine and dryer and my ironing board. I use the downstairs for exercise equipment, I would call it finished. I do not have furniture down there per say, I have mostly my exercise equipment, yes it is finished.

Mr. Davis: Do the other two attorneys still have space in the house?

Ms. Pantazis: There is only one other attorney there and we work together and we office share. It is not two other attorneys, the third attorney left in June of 2008.

Mr. Davis: And you also have a paralegal there?

Ms. Pantazis: I do, she is my daughter.

Mr. Davis: Just out of interest, the garage, you are going to use the for storage of files and correspondence?

Ms. Pantazis: We have, I wish I had a picture of it, it is a very large two-car garage, it is almost like a separate dwelling. We are able to put two cars in there, my husbands work table, tents, lots of different storage but we also have four file cabinets that we keep old files in, so besides our cars, we are able to keep our file cabinets in it.

Mr. Davis: I think Melody; do the requirements only allow one other person?

Mrs. Musante: It says: not more than one employee other than the occupant's family member residing at the principle dwelling.

Mr. Davis: So your daughter does not reside there?

Ms. Pantazis: No.

Mr. Davis: Neither does the other attorney?

Ms. Pantazis: No.

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Mr. Davis: That is all I have.

Mr. Gibbons: Any other questions?

Dr. Larson: I have one Mr. Chairman, Ms. Pantazis; you expressed the intention to live at the residence. That means you are going to sleep there.

Ms. Pantazis: I do sleep there with my cat.

Dr. Larson: Okay, and how about the weekends?

Ms. Pantazis: Yes sir.

Dr. Larson: Still on the weekends?

Ms. Pantazis: Yes sir, I did go home last weekend, my son was visiting from Danville, Virginia, so I went to the house on Rose Petal Street so that we can all spend that weekend together since he was up visiting. I have been spending weekends and weeknights, every night there.

Dr. Larson: No further questions.

Mr. Ingalls: Let me ask, did you find the sign?

Mrs. Musante: Four (4) square feet.

Mr. Ingalls: How many clients would you expect on an average day to come to the house?

Ms. Pantazis: Some days I may have three clients. I would say I see no more than three clients a day and may not see that many, three times a week. I like to keep my calendar open so that I can work on my cases and so I block off days. But, I think the most I have seen is four clients during a day. Now I will tell you in my profession, we sometimes have to have depositions and I may have four or five people in my conference. That is not very often, it would be once maybe every six months or so that I might have a conference but that would be the most that, I would expect.

Mr. Ingalls: Three to five a day would be somewhere in there.

Ms. Pantazis: Very average.

Mr. Ingalls: Okay, thank you.

Mr. Gibbons: Any other questions? Okay, Rose I want to thank you for working with the staff and coming up with a good compromise. That speaks very highly of you.

Ms. Pantazis: Thank you.

Mr. Gibbons: I have known you for a long time and it never changes. With that said, I will close the public hearing and return it back to the Board. The wishes of the Board please?

Mr. Ackermann: Does anyone else want to speak?

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Mr. Gibbons: I am sorry; I should not have closed the public hearing. I will come back here in a minute; I get so excited getting a compromise that I forgot. Is there any member of the public that would like to speak for or against this application?

Laura Pantazis, 77 Boundary Drive, Stafford, Virginia and Rose Pantazis is my mother. I started to work for her three years ago after her partner died in a plane accident. I quit my job because my mom really needed help, it was supposed to be a temporary assignment but it became permanent because it became a family business. My mom does all the legal stuff, I do all of the paralegal stuff and my dad does all of the building and maintenance. It is a family business in every aspect, it had become a second home to me and when I visit my mom, I do not visit her at 1 Rose Petal Street; I visit her at 12 Stafford Avenue. I lay on her bed, I watch TV, I play with the cat and it is a home to her and a second home to me. It is not like an office, I feel as comfortable there as I would in my own house and in some ways more comfortable. I ask that you very much please accept this because without this we won't be able to continue our business and I won't have a job and it scares me to be without a job and house and to have bills coming. To see this wonderful family business collapse, that is why she moved there. It was really hard on all of us because we are a very tight family and it really made me sad that we used to all live under the same roof and now we live in three separate houses in Stafford but is something that is absolutely necessary and it is something my family is willing to sacrifice in order to keep the business going. I please ask you very much to pass this tonight so that we can continue having our business. My mom does live there and it is something we have all talked about as a family and it has been a great privilege to work with her and to be able to have this experience. A lot of people do not get to see their families a lot because they have to work and I get to see my mom every single day for multiples hours a day and it has been an absolute pleasure and I do not want it to end. Please help us and let us keep doing this, we just want to keep our family business going. Thank you.

Mr. Gibbons: Anybody else on my right who would like to speak, anybody else on my left? I will close the public hearing. If you want any rebuttal of your daughters' remarks, you are welcome to do that. I will close the public hearing and bring it back to the board. The wishes of the Board please.

Dr. Larson: Mr. Chairman, may I ask questions of staff?

Mr. Gibbons: Yes sir.

Dr. Larson: I just want to clarify that for the rules of the home business, they will allow one non-family member to work out of the home business.

Mrs. Musante: That is correct.

Motion:

Dr. Larson: Mr. Chairman, I would like to move that we pass the Special Exception for case Se09-4/2900207 with the following conditions: that the days and hours of operation as the applicant already stated, I think it was 9:00 am to 5:00 pm weekdays, that the parking will be off street for your clients, that you must comply with all State and Local Codes, that you install a handicap ramp as shown on the submitted building permit, that you continue to reside at the premises being defined as staying there, sleeping in a normal way.

Ms. Pantazis: That's right.

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Dr. Larson: And that this Special Exception will expire in five years.

Mr. Gibbons: Do I have a second?

Mr. Ingalls: I will second that motion.

Mr. Gibbons: Do we have any additional comments?

Mr. Davis: You did not mention the no sign requirement.

Dr. Larson: The what?

Mr. Davis: The no sign requirement.

Dr. Larson: Right, I think a sign is allowed under the code, is that correct?

Mr. Gibbons: Yeah, we want to allow the sign.

Mr. Ingalls: My thought on the sign was... really the traveling public out there, if you are looking for her office I want them to be able to find and not wandering up and down the road to find it. For me the sign provided direction for people to be able to find her. A two by two sign maximum I don't think would be obtrusive to the neighborhood and change the neighborhood. That is why I was talking about the sign earlier because I feel like if I am riding up and down that road, I want somebody going to be able to find her and get off the road and get into her place and she does have a loop driveway there, which is even better than most we have and this is the reason why I feel a sign in that area, that is a high traffic area.

Mr. Gibbons: Any other additions to the doctor's motion? All those in favor say aye

Mr. Ackermann: Aye.

Mr. Davis: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mr. Gibbons: Aye. Any Opposed? Any abstentions? Good Luck to you Rose.

Ms Pantazis: Thank you.

Vote:

The motion to approve the Special Exception with conditions passed 5-0.

Mr. Ackermann – yes

Mr. Beauch – absent

Mr. Davis – yes

Mr. Gibbons – yes

Mr. Hudson – absent

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Mr. Ingalls – yes

Dr. Larson – yes

2. **A09-2/2900205 - DGF LAND COMPANY LLC AND JOHN FIELDS** - Appeal of the Zoning Administrator's determination letter dated June 18, 2009 regarding violation of the requirement to construct an enclosed building for the crushing process and removal of automobile fluids, Section 28-39(b)(1), "Performance standards in M-1 & M-2 districts", on Assessor's Parcels 22-28B & 28E, zoned M-2, Heavy Industrial, located at 164 and 182 Norman Road.

Mr. Gibbons: Melody, would you read the next application 2900205?

Mrs. Musante: Case A09-2/2900205, DGF Land Company LLC and John Fields, Appeal of the Zoning Administrator's determination letter dated June 18, 2009 regarding violation of the requirement to construct an enclosed building for the crushing process and removal of automobile fluids, Section 28-39(b)(1), "Performance standards in M-1 & M-2 districts", on Assessor's Parcels 22-28B & 28E, zoned M-2, Heavy Industrial, located at 164 and 182 Norman Road. You have the appeal application, the owners consent form, the Zoning Administrators letter dated June 18, 2009, DMV Zoning Compliance form, maps and the Code section 28-39(b)(1). After a complaint was filed regarding the enforcement of Section 28-39(b)(1), "Performance standards in M-1 & M-2 districts within the M-2 district. All uses conducted within and 500 feet of any A-2, R-1, R-2, R-3 or R-4 districts shall be conducted within an enclosed building. A letter dated June 18, 2009 was sent to DGF Land Company LLC, John Fields and DGF Auto Recycling LLC, this letter acknowledged actions that had been taken alleviate the violations cited in the March 13, 2009 notice of violation and also noted an enclosed building must be constructed for the performance of crushing operation and the removal fluids. An appeal was filed on July 16, 2009 regarding the enclosed building.

Mr. Gibbons: I had one additional item furnished to each Board member that was from the DMV, the person who authorizes the online dealer and services and DMV has authorized Mr. Fields to continue until the closure of this hearing or the decision of the BZA. He has been granted the ability to continue on by the DMV and each Board member should have gotten this in the email. Okay, now I will open the public hearing, would the applicant come forward please.

Clark Leming: Mr. Chairman and members of the Board of Zoning Appeals, good evening, my name is Clark Leming and I am here on behalf of the applicant. Before anything else, I would like to request a deferral, I note that there are five members present and from the standpoint of any appellant, the Zoning Administrators determination, those are not nearly as good odds as when seven of you are here. Those of you who have known me to appear before the Board in the past will recall that I have always tried to get seven members the Board as I think that represents the best possibility that my client has the full advantage of the BZA hearing. So, my position is manifestly unfair to any appellant coming before you appealing the Zoning Administrator's Determination because under State Code four votes are required regardless of how many members of the BZA show up. Now this case was deferred in August and it was deferred arguably at my request. What happened though was somewhat an unusual circumstance, we had two appeals pending and had indicated that one had been settled and that was withdrawn and then the county took the position that the second appeal was moot, and there was not longer anything else pending before the Board of Zoning Appeals. We did not agree with that position and I don't think is their position today but the basis for the deferral was to resolve the mootness issue and we were prepared to go forward on the underlying appeal but that was the first that any of us on our side of things had heard of the theory that the determinations and the appeal was moot. That was the basis and the county concurred with the request for that deferral so I realize you have bylaws I am not sure whether that counts, certainly,

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it is not a normal kind of deferral from the applicant. We were not requesting a deferral on the substance of the case but simply on the procedural issue of whether or not the case was moot. Now, having said all that, I am here at your disposal, I can proceed with what I have planned for tonight but I wanted to get that on the record.

Mr. Gibbons: Well, Mr. Counsel, what if we, let me propose this to you because the Board makes the decision on deferrals. That we go ahead because the public was here last month and I want to treat the public properly. That way we can open the public hearing and hear all of the arguments tonight and the public input, then defer to next month when we hope that the seven members will be present. But at least let the public make their case tonight as well as yourself. Is that agreeable to you?

Mr. Leming: Given what I have said, if those are the wishes of the Board and the Chair, then we will proceed in that fashion.

Mr. Gibbons: Well, I will ask the Board if there is any problem with that?

Dr. Larson: Mr. Chairman, I would prefer it that way, the public has been patient enough to sustain one deferral. I think we should hear the case.

Mr. Ackermann: I think we should hear the case to not defer this case also because we did defer last month. I would prefer that we go forward with it now.

Mr. Ingalls: If we defer after we hear the public and presentation, I would hope we would hold the public forum open next time we meet so if we wanted to have additional comments, somebody might come back. We don't have to hear everything again but at least if something comes up, I would like to be able to hear the public or anyone else. I would like to keep the public hearing open.

Mr. Ackermann: I have real problems with deferring it, it would be my opinion that we open the hearing, do the whole hearing and if for some reason we cannot make a decision ourselves then we could do that. I am uncomfortable saying we are going to defer from the beginning of this.

Mr. Davis: That is my opinion also; two members are not here tonight and did not hear the public speak.

Mr. Gibbons: Under the bylaws, he has the right to ask for a deferment.

Mr. Davis: One time.

Mr. Ackermann: I think he did.

Mr. Gibbons: Andrew why don't you explain.

Mr. McRoberts: Mr. Chairman, that bylaws in 7-7 say that "on request from the applicant or his authorized agent, at any time prior to the Board taking a definitive vote, the Board will consider a request to defer any agenda item he has pending before the Board", so in the end I think the answer is it is the Board discretion whether to have a deferral or not. I think whether he has made a request in the past does not seem to be relevant based on 7-7.

Mr. Gibbons: Now under the Code, if I read the Code right, a request for a deferral is the same vote requirement as administrative vote versus a decision vote. So this would require four either way.

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Mr. McRoberts: I think that would be correct.

Mr. Gibbons: So if we don't come to a resolution then we do not proceed at all. Is that correct?

Dr. Larson: Mr. Chairman, I think if we did not go to a resolution, there would be no deferral granted. I think that is what that says.

Mr. Gibbons: So, he has asked for a deferral, which is the question on the table now. We need to dispose of that. So, all in favor of deferral say aye.

Dr. Larson: Aye.

Mr. Ingalls: Aye.

Mr. Gibbons: Aye. And no?

Mr. Ackermann: No.

Mr. Davis: No.

Mr. Gibbons: Alright, it is 3-2, are we allowed to go forward now?

Mr. McRoberts: Yes sir, the matter has been properly addressed.

Mr. Gibbons: Okay, and this will be deferred until next month.

Mr. Ackermann: No, we voted no deferral I thought. We did not approve a deferral.

Mr. Gibbons: okay, so we will proceed. I will open the public hearing and go ahead Mr. Leming.

Mr. Leming: Now, can I have my ten minutes back? Thank you. Mr. Chairman, I have some handouts for you. These consist of affidavits and some code sections, I am just going to hand them out at this point. Now to understand the issue that is before you this evening, a little background is necessary. As you will recall at the August meeting, there were two appeals pending before you, there was one appeal from a March 13th letter and an appeal from a June 13th letter. The March 13 letter, as indicated in August had been resolved; the sequence was this though, at a meeting on June 3 to address that violation that had been noticed in the March 13 letter there was a site visit to determine the progress. There had been no reference at that point about the issue that was before you this evening and that is the failure to enclose in the County's view certain activities that occur at the salvage recycling facility within a building for those things occurring within 500 feet of adjacent residential properties. There had been a couple of site visits at that point and a prior letter of violation, then on June 13th, the letter that is relevant to tonight's proceeding, which indicated that the other issues were being addressed or were partially addressed, in the process of being addressed but also cite this additional violation that had not been noticed at that point and we appealed that and that is the single matter that is before you tonight. In that June 13 letter, it was clear under the background submitted here from the County that there was a complaint filed, not clear, whether the complaint came in before the March letter or there was a second complaint or what had happened from there. This issue was not noticed in the March letter and I would like to explain the significance of that in a minute. There was no specific ordinance cited in the June 13 letter, just an indication that these activities had to be enclosed. Now there was another activity going on at that time

with what the Chairman indicated a few moments ago, the DMV certification and every two years for a salvage yard recycling facility to get a license they have to have a form completed by the county that certifies that they are in compliance with the Zoning Ordinance. Well year after year, the county has signed those for this particular facility and the license has been obtained. Those are not simply a matter of paperwork coming into the office and something being signed, they entail a site visit at this point and that is referenced in one of the affidavits before you from Mr. Banks, one of the prior owners of this property. Now what has happened is the DMV certification went forward for everything at our last meeting, they signed off on it except the demolition portion of it, well not withstanding the county's failure to sign off on it, DMV went ahead and granted the license for the demolition certification so that activity is recognized and fully licensed by the state at this point. That holds, as I understand it for a period of two years unless the county request that it be revoked. The issue before you no longer has as a backdrop that DMV certification or the license that has been taken care of. Now, there are two reasons why we believe that the determination of the Zoning Administrator is incorrect in this case, the first is that there have been numerous occasions under which the county has decided that the property was in full compliance with the Zoning Ordinance. We will talk about the most recent of those, which was in 2006 in a moment. The second general reason why the determination is wrong is because in our view and I will explain the applicant is in compliance both with the 1978 ordinance and the 1995 ordinance, the new one which he has the option of complying with as well as amended in 1997. On the subject of the prior determinations, recall that under Virginia Code section 15-2-2311(c), there is a provision that says once a determination is made by any administrative officer, not just the Zoning Administrator but any administrative officer, first you have thirty days to appeal it, which is why we are here before you but there is another provision that says that after sixty days that determination is final and absence of fraud or malfeasance of some kind, that decision stands and cannot be changed where there be reliance on it by the property owner. Three different times since Mr. Fields has been on the property the county has signed off on a DMV certification indicating they are in full compliance with the zoning ordinance. It is our understanding that you hand the form to the county, the county comes out and does a site visit and determines if there are any violations and if not they sign off on the certification. In addition to that, we sent out to you this week a letter from 2006, we obtained this through a Freedom of Information Request, and this is a letter from Ms. Hudson that is dated November 27, 2006. There were questions that were raised by an adjacent property owner and his email is there as well, Mr. Taylor that lives next door. One of the specific questions that was raised number four has to do where these certain activities have to be conducted within a building within 500 feet of an adjacent property and specifically sited is crushing. Ms. Hudson came back on that point and her number correspond with his issues, comes back and says and existing business and refers to the parcels in question, cannot be penalized for a new development on adjacent property. I think the very clear assumption underlying this is that this is a situation where the county does not have the authority to enforce the zoning ordinance because of the history of the case, the original Special Use Permit and the time that has lapsed. Now in addition we have the original 1978 SUP, the Zoning Administrator was also the Planning Director at that point and there was the same ordinance affect requiring the enclosure within 500 feet. Some minor variation as you will note from materials I sent out to you. The Zoning Administrator decided what was appropriate was a 50 foot vegetative buffer. We think the zoning administrator made a determination at that time that what was going on the property was not processing, manufacturing or servicing, which are the things that are listed in the ordinance that would have to be enclosed under the 1978 ordinance. We have given you some definition of processing and those are the reasons we do not think the county has the right legally to come forward at this point and say you have to put the building there because they already decided in the past that he did not have to have the building there. The county is prohibited by Code Section 15-2-2311(c) from changing its determination after sixty days. It is our position that he is in compliance under the new ordinance. The ordinance in question that the county is trying to enforce, the new ordinance, which indicated that it is a screening provision. The purpose of enclosing something is to be sure that it is not visible and that sound is contained from the

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perspective of adjacent properties. If this ordinance is enforced in the manner that the county is indicating it should be enforced, this county has any number of M-1 and M-2 uses that would have to be enclosed. The airport is zoned M-1 and the ordinance says all M-1 used adjacent to properties would have to be enclosed. In summary our position is number one, that the county cannot change its determination, Virginia law protects the owner from a change in the determination that is implicit in the DMV certification, in the 2006 letter and even a fair reading of the statute, this is not manufacturing or processing and under the new ordinance this kind of activity is treated entirely separately and has separate screening requirements from those contained under the replica of the old ordinance that carried over in to the 1995 ordinance. That concludes my presentation and would be happy to answer any questions.

Dr. Larson: The ordinance 15-2-2311(c) requires that your client would have had to materially change his position on a good faith reliance on his actions based on the county's actions, what material change in his position did he do based on that?

Mr. Leming: Well, first of all, he purchased the property; keep in mind this is the fourth owner and operator of this property and all of that was checked out at the time the purchase was made. He has put substantial money into improving the site and enhanced the buffers. The business has expanded. He has spent hundreds of thousands of dollars with the reliance that he would be able to proceed like he did in the past.

Dr. Larson: So you are saying that the crusher could not be used in a building.

Mr. Leming: According to Mr. Fields no. Mr. Fields come on up so we have a clear record of your testimony.

John Fields: John Fields, 164 Norman Road, the crusher is not designed to be put into a building, it is not recommended to be put into a building, there are issues with, while all of the cars are fully drained, fully greened, there is always a possibility of residual gasoline and residual fumes. There are two major crusher manufacturers that I consulted when discussing the building issue and neither recommended putting the crusher in a building. The walls, if it was to be enclosed would have to be almost half way open anyway in order to even operate it because the machinery would have to go in and out to get it. It is not designed to be enclosed.

Dr. Larson: Could you state again how much the crusher was?

Mr. Fields: \$150,000.

Mr. Ingalls: Is this a mobile crusher?

Mr. Fields: it does have wheels and can be moved but not something that is moved on a regular basis.

Mr. Gibbons: Okay, we will probably get back to you in a little bit. We will go now to the County, who is representing the county, is that you Rachel?

Ms. Hudson: Yes, if you have question of me, I will be happy to answer them and Gail Roberts is representing me this evening on this appeal.

Mr. Gibbons: Any questions of Rachel?

Mr. Ingalls: Are there any other salvage crushing operations in the county?

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Ms. Hudson: I do not know if there are any permanent crushing operations within the county, I do not know if there are any temporary in the county at this time. I know a few years ago I was in the field a lot doing site inspections and complaint inspections and there were auto repair places that had temporary crushing.

Mr. Ingalls: Do you know of any temporary crushing that has taken place in the county?

Ms. Hudson: Yes.

Mr. Davis: What inspections were made or why didn't we know or think that we needed an enclosed building for the crushing operation.

Ms. Hudson: We did not regularly conduct inspections when we signed off on the certifications. We made sure the zoning was in place for the use, that they had the proper zoning and proper permits.

Mr. Davis: Is that basically what DMV asks for?

Ms. Hudson: That is very confusing as well because it does state on their certification form that the site must be in compliance with all applicable zoning ordinances.

Mr. Davis: I am not sure if that answers my question.

Ms. Hudson: I can say that we did not regularly do inspections on these sites that were requesting these forms to be signed.

Ms. Roberts: As Ms. Hudson just stated previously when the county issued these DMV certifications; they were only looking if that zoning allowed this use. It was not until we received these appeals and going back and forth with Mr. Leming that we carefully looked at the statutory language and agreed that it was little troublesome. Now on the DMV site, if you go and look at the form it says this is to show you have the appropriate zoning and does not talk anything about violations. But the statute and the form itself does get confusing, the only thing we can say here is at any time the county filed a DMV zoning certification previously, it was always that we were certifying that the land use was allowed. I would also like to note that I know Mr. Leming provided affidavits regarding the crushing facilities previously. According to our DMV records on file, the first time a demolisher or crusher was signed off by the county was 2005. We have no record that crushing took place on that property previously.

Mr. Ingalls: I assume we as the county can go out, visit any site at any time, and do an inspection.

Ms. Roberts: Correct.

Ms. Hudson: We respond to complaints only.

Mr. Ingalls: How do you respond to Mr. Leming certifying that the ordinance may be a little vague in that there are certain uses that you cannot put in buildings? How does the county address that?

Ms. Roberts: Well currently before you today is only the issue is if you think it is absurd to put a crushing operation, we are not dealing with an airport today; we are not dealing with a tower. It is fact specific and the issue is if you think it is reasonable for a crushing operation to be in an enclosed building.

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Mr. Ingalls: I should look at it from that point of view, whether I feel like under the county's ordinance, this is something that should be in a building. I should say a quarry should not but there are some other things that we have this gray area running through and then there are certain things we are going to put in a building definitely. You are saying I have the criteria based on the evidence presented whether that is what the question is.

Ms. Roberts: Correct. Mr. Chairman, if I could Cary Jamison, who is the building official, is here in the audience if you have any questions that she may be able to answer.

Mr. Gibbons: As long as she has raised her right hand.

Ms. Roberts: Did you raise your right hand in the beginning?

Ms. Jamison: No.

Mr. Gibbons: Do you want her to come forward, will that help you?

Ms. Roberts: I did not know if you had any questions, like you had asked about drainage and different things. We have been in contact with DEQ who has been out to the site who says there is not any problem currently with drainage and I know Mr. Hubble with our Erosion and Sediment crew has been out. I did not know if there was any building code provisions that you may have question about.

Mr. Gibbons: It would be good to have her come forward.

Ms. Roberts: If you have any questions.

Dr. Larson: Mr. Chairman, before Rachel sits down, I wonder if I could ask her one more question?

Mr. Gibbons: Sure.

Dr. Larson: The previous BZA meeting, there was a case before us dealing with the screening requirements and it is my understanding now this property is in compliance with the County Code on screening?

Ms. Hudson: As of August 25.

Dr. Larson: Okay.

Ms. Hudson: Thank you

Cary Jamison: My name is Cary Jamison, I am acting Building Official.

Mr. Gibbons: By standing and raising your right hand, you swear or affirm that all testimony before this Board shall be nothing but the truth.

Ms. Jamison: Yes sir.

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Mr. Gibbons: Thank you ma'am. Now Mr. Ingalls, would you like to ask the question about the building?

Mr. Ingalls: I do not know if you could answer that whether she has ever seen one of these things inside of a building or not.

Ms. Jamison: No, I have not seen one inside of a building.

Mr. Ingalls: I assume there could be building issues with the things that Mr. Fields talked about fumes and many other things that the building official would look at if the plan was presented to you, it would certainly be.

Ms. Jamison: Yes sir. To the building code and to the fire code.

Mr. Ackermann: Do you think it is possible to put something like this inside of a building?

Ms. Jamison: Yes, anything is possible given the requirements of the equipment and the processing that is doing. The limitations based on the construction type of the building; if you go above 12,000 square feet, you would have to put a sprinkler system in. There are different requirements.

Dr. Larson: you are saying there would be exhaust fans to take the fumes and the floor loading could be mitigated by particular concrete, the drainage could be built into the building that is required?

Ms. Jamison: Yes, there are ways of doing it but there are concerns of whether it is beneficial to put it in or not. You can put anything in a building and design it according to support that.

Mr. Ackermann: I am sure the specifications for a building are very specific. Are we talking about an enclosure, a building or some other sort of enclosure?

Ms. Jamison: As far as the building code goes and the Virginia Uniform Statewide Building Code, which is our code that adopts the model code, states there are two types, we govern building and structures. A building is a building, what we all know as a building and a structure is a dock or bulkhead, a seawall or retaining wall, those are structures. A building would have side and a roof.

Mr. Ackermann: Thank you.

Mr. Gibbons: Thank you, any other questions? Okay, now I will open it to the public, anybody on the right hand side that wants to speak for or against this application? Good Evening Mr. Woodson, we are glad to have you here tonight.

Bob Woodson: Good Evening sir, my name is Bob Woodson and I live at 26 Aquia Drive.

Mr. Gibbons: I am not trying to interrupt you but if you need more than three minutes, you are welcome to it.

Mr. Woodson: Thank you sir. I am the Supervisor for the Griffis-Widewater District here in Stafford County. I am here to speak on behalf of the many citizens, some of whom are here tonight, that live in Aquia Harbour and Widewater and for years had to endure activities at the Norman Road Salvage Yard that encroached on there lives. At the same time this operation failed to comply with our County

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Ordinances, Stafford citizens should have confidence in Stafford County Government and their elected officials that we ensure that everyone complies with our laws. There are no favorites, these citizens that are here tonight and there are many more unable to attend are only asking that our laws be enforced. For years they have complained to County officials that this facility adversely affected their quality of life, it had an adverse effect on their economic interest because of the value of their homes and did not comply to existing county ordinances. After I was elected, I immediately asked the Planning Commission to look into this matter; subsequently as a result of Dr. Kirkman's findings, I asked county staff research this issue. After many meetings with county staff and hours of staff work, it was determined without doubt that this facility was not in compliance. Therefore, I come before this board and respectfully request that you affirm the Zoning Administrators decision tonight, the laws of our county must be adhered to by all. Thank you.

Mr. Gibbons: Thank you Mr. Woodson. Anybody else on my right? Now I will go on my left sir. We want to thank you for the previous month for being very polite.

Alan Steve Taylor: My name is Alan Steve Taylor and I reside at 210 Lighthouse Cove, lot 21-31B, I am only going to take a little bit of your time, I wrote a very eloquent statement which I will provide to the recorder when we are done but I am not going to read that. I appreciate the opportunity to come before the Board tonight, I have been doing my research, I am a retired Army Lieutenant Colonel Military Intelligence Analyst, in finding the truth out of a jumble of misfacts is my job and I know how to do it well. I prepared a spreadsheet, which I provided to Mr. Woodson that compared the 1978 Code to the new Codes along with the DCSL showing how they were clearly in violation. That started off a series of staff meetings that he had, I have tried to work with Ms. Hudson over the years and when I presented that evidence to her, she essentially told me she was not going to penalize an existing business owner who was there before we moved in, which as you know is false because there was nothing there when I moved in. It was beautiful woods and trees, deer were sleeping behind my lot, there was nothing going on there, it was not until Mr. Fields took over that any operations of any type started taking place. I was already there and in place, it appeared to me at that time that the county was clearly on the side of Mr. Fields and they were not really going to do anything. I think we have heard tonight that they failed to go out and do the proper inspections before submitting the paperwork to the county and to the state. That is not my fault and not my neighbors fault. I went out and did the research on the crushers and the reason the Board said to put it in a building is because of the environmental hazard. Just to state some of the things that you may not be aware of as we have a lot of sick children in Aquia Harbour and people do not really know why they are sick. When you crush a car, here is just a few of the things that come out of it and go into the air, they go into the ground water, they attached themselves to the ground and machines move and dust goes in the air Steve Taylor inhales it and now I have chronic bronchitis. Here are the kind of things they release: arsenic, barium, benzene, cadmium, chromium, ethyl benzene, lead, talc, styrene, and forty other contaminants. Chromium alone is enough to cause lung cancer. The barium and several others can affect your nervous system and cause all kinds of symptoms in the children. All this stuff coming off this land for years is eventually going to make it into the water system and go down to those rivers and lakes. When I looked at the standard put out by the auto recycling industry, this is a copy of their compliance guide, it talks about, the vehicle crusher should be situated in a building or self contained impervious surface, preferably under a roof and protected from all weather conditions, the floor surface should be sloped to contain the fluid and the crusher should be positioned toward the center of the surface rather than the edge. The reason was to have all of the contaminants flow down, this thing goes further on to explain the air conditioners and other devices that would collect the fluids and prevent that from escaping from the building into the environment. Because it is not just the oils and stuff that leak into the ground, it is those things that we cannot see without eyes that in very small amounts such as mercury, because a lot of these vehicles have mercury switches in them, if his guys take out a few of those mercury switches,

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where do they go? It would go into the air and the prevailing wind takes it down to my neighbor's houses and mine. When the board made the decision to put it in a building, they did it for a very good reason, I urge the Board to go back and look at those reasons and I think you will find out exactly what I am talking about. This issue keeps coming up across the county and in each case the Planning Commission and every Board of Supervisors sided that the fact that these types of machinery had to be put in a protected area to protect the citizens. I was not able to find one case in which they sided with the business owner. Mr. Leming discussed the emails between me and Ms. Hudson and they were all informal conversations about what they would enforce or not enforce and that kind of stuff and I do not feel that they are applicable to this stuff here. What is applicable is what the code of 1978 says, it says his business is not supposed to be visible from within 500 feet of a residential area. I have asked Ms. Hudson to come to my yard, you can see all his cars, the processing facility, and you can see everything. She took pictures, went back and wrote me a letter that he was in compliance. I am getting ready to file an appeal because I cannot see how that can be. All of my neighbors can see the salvage yard, the noise levels are consistently violated, and that machine alone will put out between 90 and 100 decibels in the proximity of the machine. By OSHEA standards that is devastating to the hearing that is like putting a 12-gauge shotgun next to your ear with no hearing protection. As Mr. Woodson stated and Ms. Hudson made it clear in every correspondence, only the 1978 code applied. The new ordinances did not apply to this case and I have all the documentation to prove that. I ask the board on behalf of myself and my neighbors, god has given me the strength and wisdom to pass along the things you need to know to make the good and right decision. We have to protect the health of our people and our children; money is not the first priority. I appreciate the Board's time.

Mr. Gibbons: Thank you sir, anybody else on my left?

Judith Taylor: My name is Judith Taylor; I reside at 210 Lighthouse Cove in Aquia Harbour. We are a military family and I mean that literally. We have documented proof that a member of our family has served in every war that this county has ever had from the Revolutionary War right up to our daughter in Iraq, even the war of 1812. My husband put twenty years in the army, my father served in World War II, Korea and Vietnam. My husband's father jumped into France on D-Day, we thought after all the years in the military we were in every type of uncomfortable situation you can think of but we did it because that is what you sign up for. I would think that given all of this, when we settled in this county that this county would follow the laws as written and look after our welfare. I have two major medical problems, I have severe asthma that has threatened my life many times and I have a neurological condition called reflex sympathetic dystrophy syndrome, which is a chronic pain condition, it is progressive and incurable. I went out on my deck one morning, I smelled the fumes from the junk yard, and within three seconds, my lungs closed up on me so that I could not breathe. I could not make it seven feet to my rescue inhaler and I blacked out trying to get to my rescue inhaler. I fell and broke my ankle in three places, which has now the RSD has settled in completely. I cannot rest at any time in my home. I cannot be sure that I can breathe the air in and around my home because everything seems to be working in such a way that everyone is doing whatever Mr. Fields wants without inspecting to see if the code was complied with. It is our environment that you are polluting; it is our lives that are being affected. The boy next door has critical conditions time after time because his asthma has gotten so bad. They are out there moving stuff and the same day he is in the hospital. The crushing is so loud that I can hear it inside my house with the TV on with the air conditioning going or even in the shower. He has people in there all hours of the day and night racing around with unmuffled vehicles; their language is foul beyond belief. I even had one of the customers before we put up the fence, come over and expose himself to me. When I called to report that, I was treated like a kook and was told that maybe he was just urinating. I am a married woman, I raised a son, and I know when a man is urinating and when he is not. Our lives have been made miserable. We have planned our retirement for twenty years to be able to enjoy our home to the

maximum ability. We put in a pool so I can get exercise and so our grandchildren could enjoy it. The main thing is I cannot breathe because of what is being released into the environment, the little boy next door is dying, and his heart stopped and could not go outside. We did not start off that way. The previous owner tried to work with us and had built a berm because we are down hill from all of this and everything drains down to us. We get a film on our pool of oil. We get our pool filters clogged up with all kinds of crud. I cannot understand how we cannot expect the county to inspect what they are supposed to inspect to before they sign off on something and just because something has been signed off on all these years does not mean that it was not wrong all these years. We have earned the right to have the laws enforced, as they should be and to live in our homes with breathable air. Thank you.

Mr. Gibbons: Anybody else? Okay, I will bring it back to the Board.

Mr. Leming: Mr. Chairman, let me cover a few points that were referenced here. Other crushing operations in the County check M&M on route 1. The DMV certification language is very clear, it specifically indicates and states that the applicant for these licenses is in compliance with all applicable Zoning Ordinances. As far as the issue about how long this had been going on and whether site visits are made, bear in mind, in Mr. Bank's and Mr. Boswell's affidavit, first of all the crushing operation has been continuous since the SUP was granted and there may have been periods where business was not that good but there has not been a time where crushing stopped on the site according to those affidavits. Mr. Banks also makes the point that when he came in for a certification on another facility he has, that he had to turn it in and was advised by county staff that a site visit was required. The issue of crushing being contained within a building specifically does not matter that it was an email that was a determination by the Zoning Administrator. That was made in 2006; Ms. Hudson took the position when confronted with the exact same issue that she could not enforce the ordinance against this property. The issues about why it is that the building was needed, I heard several things, I heard vibration, there is no indication that the crushing causes vibration, caused the ground to shake or anything like that. The issue, what is the purpose of having the building and what does it accomplish. Most of the noise on the site is things that are not covered by crushing; they are lawful deliveries of the cars, stacking of the cars, moving of the equipment on the site, the backup beepers that are required under state law. None of that is going to be enclosed. I am going to ask him, specifically, to respond to the issue of whether or not the crusher that is something under industry standards that can be contained in the building. You had a building official get up here and tell you she does not know, never seen one inside, assumes that it can be done because anything can be put in a building, but the fact is, this has never been done in this county and this county does not even know whether it is feasible to put a crusher inside of a building like that. I am going to ask Mr. Fields to address that, the issue about who came first, who is the horse and who is the cart here. Yes Aquia Harbour was platted but these homes were not built until the 1990's. The SUP was issued in 1978, all of the owner that were next door and had the ability to understand and have their closing attorney's do research or title work on what was going on next door, that was all a matter of public record and the site was there. The affidavits indicate that this site has been in continuous operation throughout that period of time. Yes, it was platted but there were no homes there though. The issue of which ordinance governs here, under Virginia law an applicant, yes he is a non-conforming user here, the ordinance has changed and the cardinal rule of law is that he is entitled to the benefit of the old ordinance. He is also permitted under Virginia law to comply with the new ordinance and I have given you arguments as to number one, if you look at the 1978 ordinance, this does not constitute what is contemplated by that ordinance as must have been the decision in 1978 because he was not required to do it when he submitted a site plan, when he developed the property, it is not contained within the conditions, nobody asked him to put anything inside of a building. Determination must have been made at that point that that portion of the ordinance did not apply because it was not processing or manufacturing that was going on at the site and affidavits that the crushing has been continuous. Mr. Woodson made the point that everybody has to comply with

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the law, that is such a general premise I doubt anybody can disagree with that. Ms Roberts got up, in this particular case, just look at the facts of this case, and don't consider the other implications, based on what Mr. Woodson said, you better consider the other implications, there are all kinds of industrial properties. I would like for Mr. Fields to address the industry standard issue that Mr. Taylor brought up and what his understanding is of those industry standards.

Mr. Fields: We are 100 percent in compliance with not only our industry standards but all other federal, state and local guidelines. We have been recognized as an outstanding producer of mercury switches, I think as Mr. Taylor stated, just a small mercury switch could contaminate entire lakes, we do that religiously and we 100 percent or 99.9 percent recycle all of our fluids out of vehicles entirely before it is crushed. There is no one in the state that has a crusher in a building, if what was told to you is true, that the contaminates are being released into the air, would not be inside the building with the exhaust fan and would still be released. We have been visited by every single environmental person and have given us the clean stamp of health but we were one of the first recycling yards in the state to be in compliance and get the new Department of Environmental Quality license.

Mr. Leming: One final point I would like to make, I know Mr. Gibbons indicated that he had been to the site and if you haven't seen this property or operation, I think under these circumstances, in fairness to all the parties, you owe it to the applicant and to the neighbors to visit the property and see first hand what is being discussed here and see that operation that is occurring on the site. I would point out that Ms. Roberts indicated that DEQ had been to the site and given them a clean bill of health and Steve Hubble, who is locally in charge of erosion and environmental quality has seen the site as well. As Mr. Fields indicated, there are no other issues. If you have any questions, I would be happy to answer them.

Mr. Gibbons: Any questions? Okay, do you have a question?

Dr. Larson: I have a question Mr. Chairman. Mr. Leming you referred to the email of the Zoning Administrator of September 10, 2006 to Mr. and Mrs. Taylor. When did Mr. Fields, if ever, become cognizant of the contents of the email?

Mr. Leming: He would have to tell you that. I do not know that he was ever aware that there was something investigated at that particular time. I do not know whether he has seen this particular document because it is not addressed to him. So I cannot tell that he has seen this document, I assume he had some general knowledge that there was an investigation being conducted of the site. But, if your question ultimately goes to if he did not know about it, what does it have to do with him, for years this county operated under the basis as was consistent with state law, that when a determination is made it is the property owner that should have the benefit of that determination. I think there was some duty to Mr. Fields and in addition to that the county has recently instituted a procedure so that every time a determination is made not only the land owner gets notice of it but even the adjacent property owners get notice of that determination, as I assume was the case here. So that is the procedure right now, if a determination is made, the Circuit Courts have been very clear, the Crucible case, the portion of the case that the Supreme Court upheld made real clear that whether somebody got notice or not does not affect the time line that are contained in 2311. The thirty-day appeal being one of those that was a subject in that case and the sixty-day period after which the decision is final. Therefore, I think that would be the legal principle that would apply in this case, the determination was made, obviously, Mr. Fields relied on the County's position taken year after year in the Zoning Certifications that he was in compliance with all of the Ordinances and so there, I think, is your reliance factor. Was there specific reliance on the 2006 determination, ultimately, the reliance is implicit because it is consistent with all of the other decisions that the county was making. Specifically, the zoning determinations but also going back to the 1978

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Special Use Permit, the implicit determination that was made at that point, no building was required. Same ordinance in effect, list of conditions as to how the property specifically covering how the property is going to be screened, no requirement in the context of a site plan and if you look at your materials, you will see that there has been a record of interaction with this county. Mainly about the buffers, where the county has come out and looked at specific things, issues have been resolved in the past. There have been several instances where the county has come out to look at the site and of course, the ordinance was in effect throughout that entire period of time. I hope that answers your question.

Dr. Larson: Thank you.

Mr. Gibbons: Any other questions? Okay, thank you Mr. Leming.

Mr. Leming: Thank you.

Mr. Gibbons: I will close the public hearing and bring it back to the Board.

Mrs. Taylor: Can I say one thing before you close it?

Mr. Gibbons: Yes ma'am.

Mrs. Taylor: There was no crusher there when we built our house; there was no crusher there at all. When we moved in 1997 until Mr. Fields put the crusher in.

Mr. Gibbons: I am really not supposed to do this ma'am. I will let you speak.

Mrs. Taylor: Plus they operate twenty-four seven. At 2:00 am in the morning they are out there moving stuff around, we see the trucks hauling; they do not even take a holiday off.

Mr. Gibbons: Okay ma'am.

Mrs. Taylor: They have made our lives hell and I have the right to expect you to enforce the law as it is written. Not because you have failed to enforce it in the past. Just because you did not enforce in the past does not make it anymore wrong.

Mr. Gibbons: Okay ma'am. Andrew, this is your first month on the job and you have heard all sides.

Mr. McRoberts: Well, if you have any questions I would be glad to answer them.

Mr. Gibbons: Well, I guess you know what the questions are.

Mr. McRoberts: I have heard answers to specific questions; obviously, I have given you some general guidance based upon what I thought at the time, I wrote it. The issues in this case seem to be flying fast and furious but I would certainly be glad to answer any questions.

Mr. Ackermann: So in what you prepared for us, you say: critical factual inquiry for the BZA is this, has the Zoning Administrator changed her mind or is she simply making a different and perhaps more specific inquiry now given the complaints. In the past when she was called upon to make any recertification's. So do you still see that as a critical factual inquiry?

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Mr. McRoberts: Well, I do, I think that Mr. Leming is making an argument under 15-2-2311(c), which is an estoppel provision that the General Assembly has put in that would astop, if all the conditions in that statute are met, would astop the Zoning Administrator from changing her position that she stated in the past. The things that are required for that include a written determination, material change in the position, good faith reliance on that written determination. It has been to the Supreme Court twice in a couple of cases. One is the Goyanaga case and the other is the Crucible case, which you all may know something about. The Crucible case, I think that the most important thing that that case speaks to for this case is the fact that the scope of the determination is key in that case, the argument was well 2311(c) applies to bar a change in position but the Supreme Court pointed out that the position that was being argued was not even something the was taken by the Zoning Administrator. So for this purpose, I think it is important to say what is the scope of the previous determination, what exactly did the DMV certification certify. I think for that you need to make a factual determination on the base of all the evidence you have received. From Mr. Fields testimony, from Ms. Hudson's testimony, from the public's testimony, specifically I think most relevant are the DMV forms and Ms. Hudson testified on that point. I think that is very important because if in fact she did not make an expressed written determination as to the compliance or non-compliance of the crushing that this landowner relied upon and made a material change on the basis of then 2311(c) does not apply. If in facts those facts are found by the BZA, then it does.

Dr. Larson: The 1978 approval for the property did not explicitly talk to crushing, in your opinion, is there an implicit permission to do that kind of manufacturing or processing or operations.

Mr. McRoberts: Well, that is a Zoning Determination I do not think I am going to get in the middle. I believe that the Zoning Administrator testified and her attorney said that processing included crushing. I think Mr. Leming made an argument on behalf of Mr. Fields that it did not and he gave you a dictionary definition that seemed to suggest that it was not. I believe that the question before the BZA is to whether or not crushing of vehicles is in fact changing the form or in fact, the definition of processing is actually more along the lines of what Mr. Leming has suggested. I do not think that I am going to get in the middle if the core issue, one of the core issues and responsibility of the BZA is to interpret the language that is in the ordinance. In the language in the ordinance in this case is well, the language in the Ordinance in 1978 was processing had to be indoors and so if you believe that crushing a vehicle is in fact processing then, it has always had to be indoors and there is no change in the law that has had any affect on that. Therefore, that is not a non-conforming use, if on the other hand you say; crushing cars is not processing, then in fact, about 1995 the Ordinance change. Whereas crushing of vehicles was not required to be indoors because it was not processing and was not manufacturing, when in 1995 the law changed to say all uses must be indoors, that was in fact a change. Then, whether this is a non-conforming use, there are a whole lot of uses I can go into. In order for it to be a non conforming use, it has to be no gap more than two years, then issues of the scope of the non conforming use have to come in, I think those are beyond the scope of this proceeding but those are the kind of issues that come in to being a non conforming use. I hope that answered you question.

Mr. Gibbons: Any other questions? I guess I will go back to my famous question. First, I would like to say tonight we gathered a lot of data and I guess the non-conforming thing, I have to go back and put it back together. What I have always been told was that as long as it was continuous, so when the property was zoned in 1978...

Mr. McRoberts: When it was zoned in 1978, it was zoned and given a permit to operate this use. The issue of processing was not part of the legislative determination of 1978.

Mr. Gibbons: That is correct. So at that point in time, that is what bothers me.

Mr. McRoberts: Well, if in fact there was processing in 1978, which I think there was something in the affidavit regarding that, and there was other testimony from the public that said it was not. I think that it comes down to a factual determination there, but again the facts are critical if in fact you believe that processing is crushing and crushing is processing. If you believe that crushing is not processing, then it is not a non-conforming use. Then another thing, Mr. Leming made a good point that, we are talking about two different kinds of things, we are talking crushing and we are talking draining. It could be that there is one answer for crushing and another for draining, you could say one is processing and the other is not, or both are or both not.

Mr. Gibbons: Anytime you store a vehicle on a property, you have to drain it. You cannot leave storage of a vehicle on a property, now with DEQ, with fluids in it, you have to drain it, which is the law. No matter, even if he did not have the crusher, he would have to drain the vehicles anyway. Okay, so I will bring it back to the Board.

Dr. Larson: Mr. Chairman, I think there are a lot of issues that we have to figure out here. I think the first is whether the use is conforming or not to address what you just said. Based on what I have heard and the definition that I have heard from the Zoning Administrator, I believe that crushing is processing. Therefore, I do not think this is non-conforming. I think that they had been under the indoor restriction from the start if they were to do processing at that property, which I interpret as crushing as well. It is up to each one of you to figure out if you agree with that but that is one of the issues we have to resolve. Another one of the issues the determination by the Zoning Administrator and what that means. The email of September 10th, item number four says: "Section 2-19, item number 1 of the code in effect at the time of the permit issuance requires that any M-2 zoned business operating within 500 feet of a residential area be effectively screened by a wall, plantings or fence so that material on that property shall not be visible from a residential district", it also says that "other than storage items (that could be junk cars all processing) could mean cars disassembly, crushing shall be conducted within an enclosed building". Is there any documentation relieving the owner of the requirement when Aquia Harbour expanded to within 500 feet of that property. The answer was "an existing business"; she gives the parcels "cannot be penalized for new development on an adjacent property". The problem I am having here is there are two issues being discussed, one is crushing but the final question was is there any Board documentation relieving the owner of that requirement when Aquia Harbour expanded to within 500 feet of that property. It sounds like the screening issue is being asked. It is not clear to me exactly which of those questions is being answered by the Administrator in this email. The other part of this that I want to point out, there really is no reasonable way to expect that Mr. Fields knew about the email in the first place. So, that is an issue, the other part of it is the approval of the licenses and whether there is an implication that the property is in compliance with zoning laws. And the crusher was a significant cost, so Mr. Fields did expend a significant amount of money on the crusher, the question is did he do that in good faith reliance on some sort of written guidance from an official of the County, licensing, Administrator that cost him to do that. The final thing, and then I will be quiet and let somebody else talk; the final thing that bothers me is the public safety and welfare issue here. It has been stated that there were not any houses built adjacent to the property until the 1990's, that might be why this has not come up or if it did it came up later, so the activities could go on earlier without anybody objecting because nobody lived there. The public safety and welfare issue is a little complicated by the fact, I think Mr. Fields pointed out, that even if they have a building and they have exhaust fans, it still going to exhaust the stuff out into the air. I am not exactly sure what good that does unless there are filters on the exhaust fans. Those are my thoughts.

Mr. Gibbons: Ernest?

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Mr. Ackermann: Well, I agree that these are many of the issues that we need to consider. I am not swayed by Mr. Leming's remarks regarding precedence on all this, I think, to me the DMV determination was taken casually until this became an issue to be considered by the folks in the neighborhood. The email, again it is not clear, I may be incorrect but I have a hard time seeing that as an official determination, an email response like that. This is clearly a burden on the neighborhood and I think it is reasonable that we take that into account. As times have changed, parts of the county be come more populated and if there are serious issues that we as the BZA consider to be serious issues and have questions about upholding or rejecting the determination by the Zoning Administrator. I think that as Dr. Larson stated the public safety and welfare are an issue that we need to think about. We also need to think about what the law is and what someone who has a property can expect to continue. I have some of those same questions but I am hoping that we can come to some resolution on this evening.

Mr. Davis: I agree entirely with those comments and I think the big issue is environmental but I also think that we have heard there has been reliance on previous determinations for DMV and other issues, emails, the letters and all of that. I do not think that any previous determination by the Zoning Administrator considered that this equipment should be in a building. We are not bound by those previous determinations, I think if something comes along after any determination that changes, we need to look at those issues and I think now that the Zoning Administrator has looked at those issues and determined that we need a building and I concur.

Mr. Gibbons: Larry?

Mr. Ingalls: In my mind, this case boils down to us interpreting a lot of legal documents before us trying to interpret what somebody thought in 1978, 1995 and 1997 and what took place in all these certifications and so forth. Still, I think in the end it boils down, for me, in 1978 did crushing require a building. We have to read the ordinance that says in 1978 did that constitute that need for a building. I am not sure I know the answer right this second. I think you have to first answer that question and that may be a simple question, if you can answer that one maybe; the rest of this is moot. Determinations, I was here and made the wrong decision according to the Supreme Court on the Crucible case because sixty days is sixty days to appeal a decision, I agree somewhat with the email, I am not sure what someone else other than a property owner can ask for a determination. I am not sure I could have gone down and asked for a determination on that and she wrote me a letter back and said I think your right, I think that needs a building and did not tell Mr. Fields and sixty days later, I say here, that determination is real, I don't think she could have done that or I could have done that. I do not know how that letter, and certainly, if Mr. Fields did not know about it, he did not rely on it. It certainly indicates maybe what the county was thinking at that moment in time; it does bother me on the certifications with DMV. I am a little concerned that certification does not say is it is a proper zone, it says all zoning qualifications and I think that certainly behovent, that state is asking the county to determine are there any violations out there. They are not just asking if it is an A zone that permits this operation. I am bothered by those, whether we went there, if we did not go there that was a misstep on the county's part and if we did... You know things have been going on since 1978 and somebody in 2000 says you know what I think I am going to change something here. I can see how somebody would go out there and maybe think everything is okay. We have heard all this evidence, we read all the ordinances, we have all these opinions in front of us and we are struggling, so I know a county employee would struggle with what is the right issue out there and whether that was an issue. At the same time, I think certainly, the applicant and everybody from day one has relied on that DMV certification that was saying, what they are doing is okay. Year after year or every two years from whenever, that they have relied on it and then all of a sudden it bothers me to say I do not think so now. I think it boils down to some of these legal interpretations. I can empathize with the next door neighbors and it seems to me that it started off as a small time operation out there and it grew

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and grew. He had a right to grow, the Board in 1978 said this piece of property, this size by this size can be this operation. In 1978 he may have had only twenty cars on there, when I look at this picture from 2009, I don't know how many cars are on there today, he has a right to do that but he also has a right and a responsibility to meet the environmental issues. We are not disputing that somebody can't come out there at any moment in time and say okay there is mercury, there is this, there is that and the other that he has to fix. That is his responsibility to meet the rules and regulations, federal, state and local, as much as I would like to say let's do something, I mean the issue tonight is do we put that crusher in a building. Now, if we put that crusher in a building, I do not think I have solved the problems that I have heard tonight just by putting the crusher in a building. Nothing says it has to be a soundproof building, it does not say it has to be this; it does not say it has to be that, it is a building. It could be a metal building, I think it will have to be a fairly big building but that is all it has to be. We are not going to solve all these other problems brought to us tonight and I am not sure they should be thought about. The issue is, I think, plain and simple, does this crusher require a building and that is the question. Like I said, I have struggled both ways with it, it is not a simple thing to say, ok it does, and no, it does not. If I could determine whether in 1978 if I think that was not required under that conditions, I would know how I have to vote. The law says I should have to vote that way because it is a legal question, not a how good I feel or how bad I feel about a lot of these other issues. Can I decide, I think it is only two issues, did the county make any determinations or are the DMV certifications a county determination and in 1978 did the crusher require a building. If I can answer those two questions, either way, then I can make a decision. I am not so sure that Mr. Leming is right, I have not been out and visited and I have not seen the site and maybe I should have and maybe I still should before I make a decision. I mean we have had all of the testimony tonight, we have had Mr. McRoberts give us information earlier in the evening, I have not had a chance to fully read and digest whether I want to make a decision even tonight based on how I feel. It is a lot of information.

Mr. Gibbons: I tend to agree with that. I have been in this along time and this is a lot of information to be fire hosed at one time. That is why in the beginning I wanted to put it all together and look at it next month. We have an attorney here now and we have not had one in the past, take a look at all the testimony presented to us and then present to us the issues that we have and get a legal opinion of where each issue is and then we make a judgment from a sound judgment that is presented by everything. No matter what is going to happen with this, it is going to go forward and we ought to do due diligence and take everything and put it in the right order in case the court does come down and pick up the procedures that we did. I personally would like to take more time, I do not mind making a decision but this is a lot of information, a lot of legal information and personally, I would like... Like in the beginning tonight, not because it would affect my decision, but I just felt that if we went to next month, it would be a lot better off for all of us, that is my opinion. Everybody has made eloquent decisions, good feedback from the public and it has been two months, and the public was very respectful and courteous. I was to thank everybody for that; it makes the job a lot easier. So it is back to us.

Mr. Ackermann: Mr. Chairman, we asked our counsel his opinion on some things and I do not know what more he would say if we waited some time on it. He essentially put it back in our laps on a number of items. I wonder about coming back to it, just as an opinion.

Mr. Gibbons: Well, I think you have a good opinion, but I just think there is a lot of information on this Ernest and I want to make sure, as Mr. Hudson said before, years ago this Board had all kinds of cases and it seems like lately these things are getting a little more difficult and you really have to do your study and research on it. I just want to make sure, like Larry, I just want to take my time and make a good decision. We get along good as a Board, there is no animosity between Board members and we are very fortunate that way. The Board went out and hired an attorney because we requested it; some of the

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viewpoints of a lot of the lawyers in the area, as well as Board of Supervisors in other districts think that this is a tremendous move on our part. A lot of times, you get appeals to the courts that could have been resolved at the BZA level if we had the right legal whereabouts and the time to advice and do the research. So, I want to take advantage of that, this is first time we have seen one in three or four years so that is all I am asking. That is just one Boards opinion.

Dr. Larson: Mr. Chairman, I would like to make a decision tonight. The only additional information I think I can get is to visit the site and I would not mind doing that because I admittedly have not done that yet.

Mr. Gibbons: It would be... Let me tell you, it is an experience. I wish every one of you had gone down to see it because you cannot replace first hand knowledge. When I was down there I learned a lot. So what is your wish Doctor?

Dr. Larson: I like to be fair to all parties; I think I would visit the site.

Mr. Gibbons: Okay.

Mr. Ackermann: Can I ask a question? So, a site visit, is it appropriate for us to speak to Mr. Fields?

Mr. Gibbons: Yes.

Mr. Ackermann: Well then, shouldn't we also visit with the neighbors as well?

Mr. Gibbons: Yes, I agree on that and we can set up a van and get the staff to go with us.

Mr. Ackermann: Can we do that? As long as we do not transact business, is that the issue?

Mr. Ingalls: I assume we may have to advertise, to keep us out of trouble, and advertise that we are going to visit the site. If we visit the site as a Board and everybody is there.

Mr. Gibbons: It would have to be a public notice.

Mr. Ingalls: Yeah, it constitutes a quorum.

Mr. McRoberts: Well, it certainly would be easier if just one or two of you go at a time because then it would not be a public meeting.

Mr. Ingalls: It would not be a public meeting, but if four of us went at one time, it could be a public meeting.

Mr. McRoberts: Or as many as three.

Mr. Gibbons: I do not mind the public knowing that we are going as a group, there is nothing for us to hide.

Mr. Ackermann: No, I do not think there is anything to hide.

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Mr. Gibbons: All we have to do is advertise it in the paper, then the certain date and certain time that the Board of Zoning Appeals is going to visit site X.

Mr. Davis: Is it necessary to advertise if you continue this meeting to another time to visit the site?

Mr. McRoberts: I think what you would do is state on the record that you are deferring it. Pick a date, time, and state it. I think that under the Freedom of Information Act, anybody that would request notices would get notices. I do not think that unless there is something specific in the Stafford Zoning Ordinance that I am not aware of, I do not think under state law it would require re-advertisement. It would be appropriate to let the applicant know, the Zoning Administrator know and I would think anybody that has spoken here tonight or has signed in would receive a notice. I think that would be appropriate.

Mr. Gibbons: Correct.

Mr. McRoberts: And anybody else that has requested notices of BZA activities. I do not think it would require newspaper advertisement, again unless there is something in the Zoning Ordinance that I am not aware of.

Mr. Ingalls: If we did it that way, that may be the way we would do it but would it be more appropriate and fair that we did advertise that the BZA will visit the site on X day at X time so that I don't talk to him and they don't know that I am talking to him, to make sure everybody has an opportunity, if I am there. Maybe I just visit the site and I don't walk over and see the neighbors, is that fair or maybe I just see the neighbors and don't see Mr. Fields; should we as a board say we are going to go visit at a certain time and date and as many of us show up as possible. It is something so everybody has an opportunity to see us there and hear what is said there.

Mr. Gibbons: Right.

Mr. Ingalls: Rather than individually, you hear one thing, I hear one thing, you know we all hear something different. I do not know, I am just saying that we ought to think about it before saying lets just go individually.

Mr. Ackermann: What is the deadline on how much time we need to give for advertisement? Is it two weeks?

Mr. McRoberts: Again, I do not think advertisement is required, I think if you all want to do the advertisement and staff can do it and there is tax money available to pay for it.

Mr. Gibbons: I would like the public to know what we are doing, that is all.

Mr. Davis: The only reason I suggested not advertising would be the time line required, I think we need to decide whether we need to have another meeting. If we continue it and do not have a requirement for advertisement, we can still advertise and have the two weeks or three weeks or whatever it is required.

Mr. McRoberts: Again, if you are talking about reopening the public hearing, the public hearing has already been held and closed. So there is no need to advertise a further public hearing unless you intend to reopen the public hearing.

Mr. Gibbons: No, I think we just want to go down; this is part of the fact-finding.

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Mr. McRoberts: Well, I would think you would just pick a date and time and announce it publicly here tonight and say you are going to adjourn to that time and hereafter the matter will be deferred until then. I would also state publicly that there will be no action taken; the whole point is just to listen and gather information. I would caution you that minutes will be required if it is an official meeting of the public body and presumably, if you are not taking any action, there will not be a whole lot to say. Certainly, some kind of minutes that describes what happened.

Mr. Gibbons: Okay. So what date would be good, the date of the next meeting.

Mr. Ackermann: I cannot do it Tuesday or Thursdays.

Mr. Gibbons: Olay, what day is good for you Ernest?

Mr. Ackermann: Monday, Wednesday and Friday are best for me.

Dr. Larson: I am out of town the week after next.

Mr. Ingalls: I do not have my calendar with me.

Mr. Gibbons: Okay, we have to have a date and it cannot be any later than the date of the next meeting. It could be any time before that as long as we advertise.

Mr. Ackermann: Would the day before the meeting make sense?

Mr. Gibbons: That sounds good to me.

Mr. Ackermann: That Monday before.

Mr. Ingalls: That Monday before the BZA meeting?

Mr. Ackermann: That would be October.

Mr. Gibbons: Do you have a calendar?

Mr. McRoberts: October 27.

Mr. Gibbons: So October 26, what time would be a good time? 4:00 in the afternoon, 3:00 or 5:00?

Mr. Ackermann: 5:00pm looks good.

Mr. Gibbons: Ok, 5:00 PM. What is the date now Melody?

Mrs. Musante: October 26.

Mr. Gibbons: October 26, so we will defer action until the next Board meeting but the official visit will be at 5:00pm on October 26. Rachel, we need somebody there taking notes,

Ms. Hudson: Sure.

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Mr. Ingalls: I would be afraid that it would be dark at 5:00pm.

Dr. Larson: Earlier then?

Mr. Gibbons: Let's go at 3:00pm, is that fair enough?

Mr. Ackermann: If someone cannot make it, they can make there own visit.

Mr. Gibbons: 3:00pm on that date, all right. So we will need a motion to defer to the next Board meeting and the visit to be on that date.

Motion:

Mr. Ingalls: Mr. Chairman, I move that we defer action on this case until out October meeting and we will have a site visit where the Board will meet on the site at the entrance to the operation on October 26 at 3:00 PM to view the site.

Mr. Gibbons: And then, what I would like to do is anybody that is signed up tonight, we give them a notice of what we are doing.

Mr. Davis: I think you need in that motion that this meeting will be continued until October 26 at 3:00 PM.

Mr. Gibbons: Okay, you got that?

Mr. McRoberts: I think that is appropriate for the motion.

Mr. Ingalls: Okay, we will include that, that the meeting be continued until October 26, 2009 at 3:00 PM.

Mr. Gibbons: Okay, do I have a second?

Mr. Ackermann: I will second it.

Mr. Gibbons: All in favor say aye.

Mr. Ackermann: Aye.

Mr. Davis: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mr. Gibbons: Aye. Opposed? Any abstentions? Thank you very much.

Vote:

The motion to defer action on this case until out October meeting passed 5-0.

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Mr. Ackermann – yes
Mr. Beauch – absent
Mr. Davis – yes
Mr. Gibbons – yes
Mr. Hudson – absent
Mr. Ingalls – yes
Dr. Larson – yes

- 3. A09-3/2900213 - SEVEN LAKES HOMEOWNER'S ASSOCIATION** - Appeal of the Zoning Administrator's letter dated June 26, 2009 stating Stafford County has no authority to regulate a subdivision sign to reflect the approved name of the subdivision on Assessor's Parcel 27F-2-B1. The property is zoned A-1, Agricultural, located in the Christy Farms Subdivision.

Mr. Gibbons: Can you read the next case? What's wrong?

Mrs. Musante: Can we take a ten minute break, please?

Mr. Leming: We might be able to...

Mr. Gibbons: No, I do not think we need a break, you just sit tight for a minute.

Mr. Leming: If I can ask your indulgence on something maybe we won't need a presentation.

Mr. Gibbons: Go ahead with you indulgence.

Mr. Leming: The case involving Seven Lakes is before you for the first time this evening and in light of the hour and what the chairman indicated at the beginning of the meeting only five of you are here tonight, I am requesting a postponement until your next meeting for this case.

Mr. Gibbons: Is that the wish of the association.

Mr. Shardenburg: Yes sir.

Mr. Gibbons: So we need a motion for deferment.

MOTION:

Mr. Davis: I will make that motion.

Mr. Ingalls: Second.

Mr. Gibbons: All in favor.

Mr. Ackermann: Aye.

Mr. Davis: Aye.

Mr. Ingalls: Aye.

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Dr. Larson: Aye.

Mr. Gibbons: Aye. Opposed? Any abstentions? Thank you very much. So granted and we will see you next month.

Mrs. Musante: We do not have the minutes for review tonight.

4. **A09-4/2900216 - HCS HOLDING CO, LLC** - Appeal of the Zoning Administrator's letter dated June 26, 2009 regarding a cemetery with a funeral home chapel as accessory use on Assessor's Parcel 19-22. The property is zoned A-1, Agricultural, located at 154 Shelton Shop Road.

UNFINISHED BUSINESS

ZONING ADMINISTRATOR REPORT

Mr. Gibbons: Rachel, do you have anything?

Ms. Hudson: I do not have anything.

ADOPTION OF MINUTES

5. August 25, 2009

Deferred

OTHER BUSINESS

ADJOURNMENT

Mr. Gibbons: With no further business, the meeting was adjourned at 9:51 pm.

Robert C. Gibbons, Chairman
Board of Zoning Appeals